

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JOHN BUCHANAN,	)	CASE NO. 4:11CV00645
	)	
Plaintiff,	)	
	)	
v.	)	JUDGE BENITA Y. PEARSON
	)	
YOUNGSTOWN MUNICIPAL COURT,	)	
JUDGE ELIZABETH KOBLY,	)	
	)	<b><u>MEMORANDUM OF OPINION AND</u></b>
Defendant.	)	<b><u>ORDER</u></b>

Before the Court is *pro se* Plaintiff John Buchanan's Motion to Withdraw his Complaint in this cause of action against Defendant Youngstown Municipal Court Judge Elizabeth Kobly, pursuant to [42 U.S.C. § 1983](#). [ECF No. 3](#). The Court hereby grants Plaintiff John Buchanan's Motion to Withdraw his Complaint without prejudice. [ECF No. 3](#).

**I. Discussion**

According to [Fed.R.Civ.P. 41\(a\)\(1\)](#), the plaintiff may dismiss an action without consent of the court either by stipulation of all parties or unilaterally if the defendant has not yet filed an answer or motion for summary judgment. A plaintiff may file a notice of dismissal under Rule 41(a)(1) only if the defendant has not yet served an answer or motion for summary judgment.

[Letherer v. Alger Group, L.L.C.](#), 328 F.3d 262, 265-66 (6th Cir. 2003) (“Pursuant to Rule 41, ‘an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.’”).

(4:11cv106)

Dismissals unilaterally by the plaintiff are governed by the Two Dismissal Rule: the first voluntary dismissal of a given claim is without prejudice; the second dismissal acts as a final adjudication on the merits and will preclude a third action based on the same claim. *Luciani v. Schiavone*, Case No. 98-4463, 2000 WL 331974, at \*7 (6th Cir. Mar. 24, 2000).

In the instant matter, the docket reflects that neither an answer nor a motion for summary judgment has been filed. The Court's liberal review of Plaintiff John Buchanan's Motion to Withdraw his Complaint as a notice of dismissal under Fed.R.Civ.P.41(a) is granted, and this case is dismissed without prejudice.<sup>1</sup>

## **II. Conclusion**

The Court hereby dismisses Plaintiff Tony Rosales' cause of action in its entirety pursuant to Fed.R.Civ.P.41(a) without prejudice. The pending motion to proceed in forma pauperis (ECF No. 2) is denied as moot.

IT IS SO ORDERED.

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May 27, 2011

Date

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s/ Benita Y. Pearson

Benita Y. Pearson  
United States District Judge

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<sup>1</sup> A liberal standard should be applied to *pro se* pleadings. *Figel v. Overton*, 121 Fed.Appx. 642, 645 (6th Cir. 2005) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). "A court should make a reasonable attempt to read the pleadings to state a valid claim on which the plaintiff could prevail, despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction . . . ." *Ashiegbu v. Purviance*, 74 F.Supp.2d 740, 746 (S.D. Ohio 1998).